

MINUTES
WARRICK COUNTY AREA PLAN COMMISSION

Regular meeting held in Commissioners Meeting Room,
Third Floor, Historic Court House,
Boonville, IN
Monday, July 9, 2012, 6:00 PM

PLEDGE OF ALLEGIANCE A moment of silence was held followed by the Pledge of Allegiance

MEMBERS PRESENT: Guy Gentry, President; Amanda Mosiman, Mike Moesner, Brad Overton, Larry Willis and Jeff Valiant.

MEMBERS ABSENT: Marlin Weisheit

Also present were Morrie Doll, Attorney; Sherri Rector, Executive Director, Sheila Lacer and Molly MacGregor, Staff.

Roll call was taken and a quorum declared present.

MINUTES: Upon a motion made by Larry Willis and seconded by Mike Moesner, the Minutes of the last regular meeting held June 11, 2012, were approved as circulated.

The President explained the Rules of Procedure to the audience.

SUBDIVISION FOR PRIMARY PLAT APPROVAL:

PP-12-04 – Kirby Broadview Farms Estates Subdivision by Kirby Broadview Farms, Inc., James Kirby, Pres. 10.28 acres located on the S side of Millersburg Rd. approximately 500' E of the intersection formed by Millersburg Rd. (N 100) & Eskew Rd. (W 300), Boon Twp. *Complete legal on file. Advertised in the Boonville Standard May 3, 2012. Con't from May 14, 2012 & June 11, 2012.*

Jim Kirby and Bill Bivins, ACCU Survey were present.

The President called for a staff report.

Mrs. Rector stated they have submitted all the return receipts from certified mail of notice of this meeting to the adjacent property owners. She said the property is zoned R-1A Single Family Dwelling and it lies within a TIF District. She said this is a four lot subdivision and there is no flood plain on this property. She said the street plans were approved June 11, 2012 and they asked for no improvements to Millersburg Road and there are shared driveways between lots 1 & 2 and lots 3 & 4. She said on June 11, 2012, the Drainage Board approved that no drainage plans be required due to the large lots. She said the Health Department has signed off on septic sites and Chandler has water lines in place and ready for connection.

Ascertaining there were no questions from the Board and being no remonstrators present, the President called for a motion.

Mike Moesner made a motion to approve PP-12-04. The motion was seconded by Larry Willis and unanimously carried.

OTHER BUSINESS:

Budget

Mrs. Rector said all she did was add 5% increase for salaries and then the Council will give what they decide they can afford. She said she kept everything the same except she added \$240 to the cellular phone line item because they pay for the Zoning Inspector's cell phone as compensation for his doing the inspections.

Discussion ensued over some of the line items and purchase contracts.

Brad Overton asked about the increase in equipment.

Mrs. Rector said she did because she keeps going in the hole. She also said she wanted to bring up that they still are a person short in the office and there are additional funds available this year even after the new full time employee starts in August, which will fill all of the openings. She said the office copier is worn out and they have to fix it all the time. She further stated that as each year passes the cost per copy increases and it is costing quite a bit each month for maintenance; however, the budget doesn't go up. She said she is getting bids for a new copier and color plotter and asking for them to lock in their copy fee for several years. Mrs. Rector said the purchasing department would like to have the old copier since it is a color copier and it will work well for them because they don't make the copies like her office does. She said she doesn't know if the Council will approve her transfer but she would like to be able to do this so they will be able to make large color aeries for the fire and police departments and plat mark ups, etc.

Brad Overton asked if that will be this year or next year.

Mrs. Rector said she will be coming before the Council in August after she gets all of the quotes. She said in answer to the question, yes she did increase the line item because she is going broke paying for copies and if she doesn't get the transfer she will need the money to pay for the copies

Amanda Mosiman made a motion to approve the 2012 budget as submitted. The motion was seconded by Mike Moesner and unanimously carried.

Formal Complaint ~ Frank Schnell dba FIT Tire Recycling, OWNER OF RECORD: J.H. Service Co., Inc., by Ronald Witt, Sr., Pres. ~ Tire storage *Granted 60 days May14, 2012.*
sixty day report.

Mr. & Mrs. Frank Schnell and Isaiah Schnell were present.

The President called for a staff report.

Mrs. Rector said on May 14, 2012, the Board ruled to allow them an additional sixty days to clean up the property and wanted a progress report within thirty days. She said they came before the Board last month

and it was reported that cleanup had begun. She said they received an email from Mary Lewis with IDEM on July 2, 2012 and the report states they inspected the property on May 29, 2012 and a new violation was observed and previously cited violations remained out of compliance. She said their summary states *that according to measurements taken and count completed FIT Tire has approximately 19, 221 tires on-site. During the previous inspection, staff was unable to count the waste tires within the processing building due to lack of lighting and the tires being inaccessible. At that time staff estimated that there were thousands of tires that were not counted, and the total number of waste tires on-site did not include the tires stored indoors. During the May 29, 2012, inspection staff estimated the number of tires stored inside and included that estimate in the above waste tire total.* She said On July 2, 2012, we also received an email from Jennifer Reno with IDEM and her email states that Isaiah Schnell requested she send the Notice of Violation and proposed Agreed Order of the IDEM issued to FIT Tire on June 5, 2012. She further said a settlement conference with the Schnell's is scheduled with IDEM representatives on July 24, 2012 at 1:00 pm in the IDEM office in Petersburg and due to the large amount of tires at the site, IDEM is proposing in the agreed order that the site be in compliance within 180 days. Mrs. Rector said the Zoning Inspector went to the property on Friday, July 6th and reports *This site has been cleaned up a lot. The tires are 75% cleaned. There is still some work to be done. This site looks a lot better.* Isaiah Schnell sent an email July 6, 2012, stating Liberty Tire will have a trailer coming to the site early this week. Mrs. Rector said if they will notice IDEM went to the property before last month's meeting where it was reported that so many tires had been cleaned up and they were working very hard. She said they can tell by the photographs that a lot of tires have been removed since IDEM has been there.

Isaiah Schnell said since IDEM has been there they have worked day and night. He apologized to the Board for not having all of the tires removed by this meeting because he had promised it would be done. He said he and his Mother have been working in this 100 + degree heat for the last three weeks and it has been difficult. He said Liberty Tire dropped off a trailer last night and they are in the process of filling it up and either late this week or early next week another trailer will be there. He said they have hauled 6500 tires out over the last two months. He said they went to Michigan to find Mr. Groves about the machine he is supposed to deliver to them. He said the State is also getting involved and the machine is supposed to be at their property on August 6th. He said the State is getting tired of dealing with this too and they said the machine has to be down to them by August 6th. He said they have set up a conference call on July 24th and they are proposing they get it cleaned up in the 180 days.

Brad Overton said with the progress they have already made they probably won't need the 180 days.

Isaiah Schnell said he is going for the 180 days. He said that starts on the 24th and this is the 9th and he is going to keep going hard until the 24th and then take some pictures and maybe they won't be so harsh on them. He said they shouldn't need the 180 days but if they are going to give it to them then he will use it in case the machine breaks down or something.

Brad Overton said so the State is going after the person who is to supply the machine.

Frank Schnell said they have also hired a lawyer to get involved in this.

Isaiah Schnell said they are pushing IDEM to stay on Mr. Groves too.

Mike Moesner asked how long it will take to get the machine set up and working once it gets to the property.

Isaiah Schnell said Mr. Groves is supposed to be the expert but it will take multiple trucks to be transported but it is supposed to be running by August 6th. He said if they get that in there it will really help them with the cleanup. He then said some of the pictures show tires that have been taken out.

Mrs. Rector asked if Attorney Doll has any suggestions with IDEM and the 180 days.

Attorney Doll said they should probably continue this to see what IDEM does; at the very least to the July 24th conference. He said if 180 days is granted to FIT Tire then he suggests this Board grant them a similar amount of time. He said frankly, IDEM is going to control this whole process and there is a whole process and it is driven by what IDEM does. He say they may want a written report of the results of the July 24th meeting and probably tie some future review...if they are uncomfortable with the 180 days maybe they want to go half that time and put it off three months and see what progress is made, but IDEM is going to really control this.

Frank Schnell said they can come to every meeting if they want.

Mike Moesner said they can see by the pictures that they have made a tremendous amount of progress and he understands how hard it is to work out in this heat.

Jeff Valiant said he drove by the property last Friday about 4:45 pm and Mrs. Schnell was out there mowing the grass. He said he drives by there daily and they are doing some work and he doesn't think the pictures do it justice.

Larry Willis suggested they report back at the next meeting, and let them know what happened in the meeting.

Attorney Doll said if they can get a copy of the consent decree that is the key.

Mrs. Rector said she doesn't know if there will be anything filed for next month and so if they could just send in a letter ...

Larry Willis said then they wouldn't have to meet just for that and made a motion that if there is anything else for the August agenda then the information will be presented and if not then at the next regular scheduled meeting where they have business.

Mrs. Rector said it may be something she can send to all of them in an email.

The motion was seconded by Jeff Valiant and unanimously carried.

Brad Overton commented this is a good example of government and individuals working together for an end result.

Formal Complaint ~ Michael & Carlotta DeClue ~ 270 W. Walnut St., Elberfeld, IN ~ *Granted 60 days to resolve violations May 14, 2012*

Mike DeClue was present.

The President called for a staff report.

Mrs. Rector reminded the Board that a complaint was filed on this property by the Town of Elberfeld and Mr. DeClue appeared before the Plan Commission on May 14th and was granted 60 days to resolve the violation. She said he filed for a home occupation for his office with the Board of Zoning Appeals and that was approved subject to the successful resolution of the pending complaint. She added he informed the BZA he was investigating purchasing a piece of commercial property for the entire business but wanted the Special Use to make the office in compliance for now. She said he was also informed the Special Use did not allow for the trucks to be at the property. She said the Zoning Inspector went to the property on Thursday, July 5th and reports *I have made a site visit to this site and found it to be the same as last visit. There is a semi-truck in the street across from the house. There is also a storage tank in the yard by the garage.*

Mr. DeClue said he is trying to get the tank undone. He said Sunday he brought both of his trucks back to the house to pump some fuel out of the tank. He said he thinks he has about 200 gallons left in there. He said the trucks usually fuel at SR 68 and SR 41 when they take the trucks home so they are not at his house. He said they are trying to get the tank empty so they can get it moved.

Brad Overton said so the only reason the trucks were there was so they could fuel them.

Mr. DeClue said that is why; there is no way to move it with fuel in it.

Larry Willis asked what time the Inspector went to the property to which he was informed it was in the afternoon.

Amanda Mosiman asked if they are requiring that the fuel tank be removed. She said she didn't think that was part of the complaint and didn't know they were making him move it.

Mrs. Rector said you are not allowed to have a fuel storage tank in a residential zoning.

Mr. DeClue said the EPA said he was set up correctly because he was under the limit for storage of 1300 gallons. He said if he can't have his trucks there then he doesn't need the fuel tank.

Ascertaining there were no other comments from the Board, the President called for remonstrators.

Janet Skelton and Phillip Turner approached the podium.

Mrs. Skelton said they were under the impression that it was against the law for anything over a 1.5 ton truck to be in a residential area and they continue to come in and out here. She said they want to know when it is going to stop.

Mr. Turner said as stated, they were at the house last night filling up the trucks but since the last meeting they have been there doing more than that. He said there is also a truck and trailer that stays there most of the time and until about a week ago he had a tractor sitting on blocks waiting for parts. He said it is a constant going back and forth. He said in the winter time he is banging on them and it goes on and on. He said he has pictures from yesterday and he has a fuel tank that doesn't have fuel anymore that is lying on its side across the road as well. (Not submitted.) He said there is all kinds of trash and semi parts sitting there. He said some of it was cleaned up and he put it in the back of an old dump truck and took the dump

truck outside of town to some property he owns and so he is cleaning up from one property to the next and it gets old. He said he can't make the corners and he drives through the edge of their yards and it is getting old. He said he tried to understand he was running a business but it went from one semi to two semis and him blocking the roads and telling them they had to go around.

Guy Gentry said it is not against the law (for the trucks) but they do have an ordinance of the size of vehicles allowed there.

Jeff Valiant said the town allows them basically for delivery and pickup. He said they are getting a lot of cutting through from traffic going to Fibertech but the basic ordinance is for delivery or pick up, not for parking and of course the County covers that for them.

Mrs. Rector said at the Board of Zoning Appeals meeting Mr. DeClue said he was no longer having truck traffic at his house; it was going to be a home occupation for his office and that it had ceased.

Attorney Doll said that is right.

Mrs. Rector said but Mr. Turner is saying the trucks are still coming to the house. She asked if they come daily.

Mr. Turner said he doesn't know about daily; it has calmed down some, but he still comes there more than just to fill up the trucks. He said there is one that stays there. He said he took pictures with his phone.

Mrs. Rector said the Board of Zoning Appeals only gave him the approval if this Board found him to no longer be in violation.

Attorney Doll asked if the truck in Mr. Turner's picture red and white.

Mr. Turner said it is and added the other one that filled up last night was one of the white ones and then he took that one back and brought the other one and filled it up.

Mr. DeClue said it is not his property that he said he crosses; it belongs to the Town. He said the right of way is 60 feet wide but that is immaterial now because he isn't having the trucks there anymore. He said the red truck they are looking at...can he see the picture...that is a truck he bought before the complaint was filed with the Town. He said he had to change some things on it and he did have it up on blocks because he had to change the hubs and tires on it to get it to move. Mr. DeClue said he is in the current process of getting insurance on it and the trailer that is setting there beside it is a storage trailer and they just finished last week end and it is going to be moved this week. He said he doesn't know what else he can say. He said there haven't been that many trucks come in or out of his property or the street in that amount of time.

Mike Moesner asked what trailer he was talking about in the picture.

Discussion ensued over the items in the photos.

Jeff Valiant asked where he stands with the commercial property.

Mr. DeClue said he turned in an offer on the property itself and there is another ½ acre right next to it and they turned in an offer on it. He explained where the property is. He said they are purchasing the

property with the building regardless whether they get the ½ acre or not. He said all he needs is an okay and then start the paperwork for SBA.

Jeff Valiant asked if there is a time frame for that; have they accepted the offer.

Mr. DeClue said he hasn't talked to him today but the offer was what they wanted because he decided the property would work for what he needed and so as far as he is concerned they have purchased it but they still need an agreement.

Brad Overton asked when he estimates the fuel tank will be empty.

Mr. DeClue said it would take a couple of fill ups but the trucks aren't available until the weekend. He said his drivers take the trucks home with them during the week and he doesn't see them.

Brad Overton said if the Board said by the end of the month...it would be empty.

Mr. DeClue said by the end of the month the fuel tank will be empty.

Brad Overton said so by that point in time the semis shouldn't be there at all.

Mr. DeClue said the only one that would be there is the red one because he doesn't have a place to go with it right now.

Guy Gentry said but there is a possibility he will have the commercial place.

Mr. DeClue said as soon as he finds out that it is his and he can start putting things out there then there won't be anything at his house.

Amanda Mosiman said they can't claim him in compliance until that happens; even though he is working on it and they know it, they can't claim him in compliance and so they really only have one option.

Attorney Doll asked if the red and white semi is licensed and operational.

Mr. DeClue said it is but he doesn't have any insurance on it because he doesn't have a trailer to go with it right now. He said if he had the dump trailer to go with it then it would have a driver and it wouldn't be there right now.

Brad Overton asked if the trailer in front of the house remains there.

Mr. DeClue said they had to put doors on the back of it and they have taken stuff out of the garages and put in there and they had to put the doors on it and they just got that done last Sunday.

Brad Overton said so the trailer is going to be gone.

Mr. DeClue said yes it will be gone this week.

Larry Willis asked if this is a box trailer or a coal bucket.

Mr. DeClue said it is a box trailer and it is sitting behind the red truck. He said it is just for storage and then as soon as they got it where they could lock it they plan on moving it and it will be gone this week.

Larry Willis said the pictures show a red and white cab and a box trailer behind it and then they also have a picture of a box trailer sitting between two houses.

Discussion ensued over the photos with it being determined one was a storage shed.

Larry Willis asked if the box trailer was sitting on his property next to the street.

Mr. DeClue said it isn't on his property it is in the street and that belongs to the Town.

Larry Willis asked if the trailer is licensed.

Discussion ensued that that the semi was licensed and not insured but the trailer is licensed and insured.

Larry Willis asked if the tractor is connected to the trailer to which Mr. DeClue said it is not.

Attorney Doll asked if there is possibly a goose-neck trailer sitting next to the evergreen trees.

Mr. DeClue said that is his car trailer.

Attorney Doll said he thinks that is in the right of way of the street.

Mr. DeClue said he is not.

Attorney Doll said the right of way is 25 feet from the center of the street.

Mr. DeClue said it is parked right where you would park a car.

Mrs. Rector said that is in the right of way. She said ten feet past the pavement is still right of way.

Attorney Doll said so it looks to him like the car trailer is parked in the right of way and maybe the tractor and trailer are as well.

Mr. DeClue said they sit at least two feet off the blacktop to which Attorney Doll said it doesn't matter it is still right of way.

Mr. DeClue said he wasn't trying to get out of the right of way. He asked if that was paved all the way to the sidewalk it would still be city property.

Attorney Doll said perhaps but the question is whether he can park these vehicles in that right of way. He said that may be an Elberfeld issue or a County Sheriff issue.

Discussion ensued over the width of the right of way and that the pavement may not be in the middle of the right of way.

Larry Willis said if the tractor isn't insured he doesn't know why he has it parked on a public thoroughfare.

Mrs. Rector asked if the Town has "no parking" signs to which Jeff Valiant said they don't.

Amanda Mosiman asked why they are making a point of this because they know he is out of compliance on a couple of issues and they know his “out” is the property he is in the process of purchasing. She said he is out of compliance and they either give him 30 days and wait on the property or they do something now.

Mrs. Rector said whether it is parked in the right of way or not he is still out of compliance.

Mr. DeClue said he isn't saying he isn't and he is trying to buy the property to move them. He said if a tree would fall on that tractor it is covered through his home owners insurance but to drive it on the road it isn't.

Amanda Mosiman asked if he will have the property under his ownership in 30 days to which Mr. DeClue said it won't happen in 30 days. He said he will know in 30 days whether they have a purchase agreement.

Amanda Mosiman said it will be at least 60 days before he can come into compliance.

Mr. DeClue asked if they give him 60 days from today and then next week he is told they will accept his offer on the property; the Small Business Administration does not move fast. He said most of the time the people won't let you occupy the property until you get an okay from SBA and what happens if it takes 75-90 days. He said sometimes it is quicker.

Attorney Doll said if he is saying he thinks the tank will be empty of fuel by this weekend; how long will it take him to get the tank out of there.

Mr. DeClue said the tank belongs to Goade Oil and it might take them a week to come and get it.

Attorney Doll said so ten days from now that tank could be gone.

Mr. DeClue said no it still has over 200 gallons of fuel in it and the only way he can empty it is to pump the fuel into the trucks he is using.

Discussion ensued how long it would take for the tank to be emptied and when it could be picked up.

Guy Gentry said there is no reason the tank shouldn't be emptied and gone by August 1st and in fact he is saying it must be gone by August 1st.

Attorney Doll said Mr. DeClue said the box trailer is going to be gone this week and so by next Monday it will be gone. He then said he can surely move that red and white tractor somewhere so it won't be sitting in the right of way.

Mrs. Rector suggested there are storage yards all over the County that rent out spaces to park vehicles.

Mr. DeClue said it took him four years to get this far and it isn't going to take him two weeks to get rid of everything that he has; it is physically impossible.

Attorney Doll said it appears there are three items, plus not bringing trucks to the home anymore other than to fill their tanks.

Mr. DeClue asked if he puts the tractor in the center of his yard and leaves it there until he finds out about his property would that satisfy them.

Attorney Doll said this is a residential area and he can't put it there. He said the neighbors don't have to look at this.

Mr. DeClue said there are others in town but it seems he is the only one in the town who gets written up for a truck sitting in the town that is not in compliance with the County ordinance.

Attorney Doll said his recommendation to the Board is they set a date and specify exactly what is to be done by a certain date. He said at the very minimum it would be the removal of the gas tank, the removal of the trailer and the removal of the tractor, otherwise authorize him to visit the Judge.

Mike Moesner asked if he has a friend out in the county that would let him park his truck there.

Mr. DeClue asked if he lived in the country would he let him bring his tractor and trailer there to which Mr. Moesner said yes he would. He then said he has 500 acres and he has trucks and tractors and he doesn't care if Mr. DeClue parks his truck there and if he wants to bring it up today he can bring it up and park it.

Mr. DeClue said he is one of the few people who would allow that and he appreciates it.

Mike Moesner said he knows what it takes to make things work and he doesn't put up with stuff that doesn't work and he finds a way to make it happen and so his place is available if he wants to park his truck.

Brad Overton said if they have a meeting next month it sounds like August 13th would be a good time.

Discussion ensued over what items needed to be removed and what specific date they should have the inspector go to the property.

Jeff Valiant made a motion to continue this for thirty days and to have the Inspector go back to the property on August 9th or 10th to verify the trailer, fuel tank and red and white semi are removed from the property and there be no other truck traffic other than coming to empty the fuel tank. The motion was seconded by Brad Overton and unanimously carried.

Mr. DeClue asked what it takes to get the rest of the town in compliance with the ordinances.

Guy Gentry said they will handle any complaint that comes before them. He said they work off formal complaints and he needs to follow the procedure.

Formal Complaint ~ Kenneth & Ruby Grigsby ~ 8866 Oak Grove Rd., Newburgh, IN ~ Junk/Salvage Yard without 8' fence. *Granted 60 days to resolve violations May 14, 2012.*

Mrs. Rector said this property was rezoned to "M-2" years ago and the ordinance requires a solid 8' high fence to be completely around the salvage yard. She said a complaint was filed on the property and on May 14th the Board ruled they were in violation of the Comprehensive Zoning Ordinance by not having the property completely enclosed within an 8' fence and that a letter be sent to them giving them 60 days to either remove the junk/salvage operation from the property or have a fence up or show a contract that a

fence has been purchased and when it will be constructed. Attorney, Les Shively, telephoned the office on July 5, 2012, stating he represented the Grigsby's and would not be able to attend the meeting this evening. She said she spoke with Attorney Shively today and there is a signed contract for removal of all the salvage material on the property with Danny VanHooser. She said the contract says the work will begin on Monday, July 9th and should be completed by Friday July 27th.

Brad Overton said that still isn't a fence.

Mrs. Rector said if it is no longer a junk yard it doesn't need a fence. She said she told Attorney Shively based on the signed contract she didn't think they would have a problem with continuing this for thirty days since they say it will be cleaned up by the end of July.

Ascertaining there were no remonstrators present the President called for a motion.

Larry Willis made a motion to table this until the August 13, 2012, meeting and to have the Inspector visit the property on August 9th or 10th to report the progress. The motion was seconded by Brad Overton and unanimously carried.

Formal Complaint ~ Donald G. Adams, Jr. ~ 7322 Jenner Rd ~ Determination on violation of operating a car recovery business in an "A" Agriculture zoning district.

Don Adams was present.

The President called for a staff report.

Mrs. Rector said a complaint was filed on June 5, 2012 stating *Mr. Adams is operating a car recovery business out of his residence. A tow truck labeled "Gotham Recovery" is frequently seen towing cars to the residence. At the residence vehicles are stored in front and in back of the house. The vehicles stored in front of the house will accumulate up to 15 vehicles for weeks at a time. Eventually a large truck will arrive and remove 3 vehicles at a time. This procedure has repeated itself since November of 2011.* She added the Zoning Inspector went to the property June 15, 2012 and took photos which show at least eleven vehicles and his report said there were at least twenty cars on the lot. She said a letter was sent to Mr. Adams on June 19th advising him of the complaint and that the property was in violation and would need to immediately remove all vehicles (except his personal vehicles) or to file a rezoning petition. She added he was further informed this would be placed on tonight's agenda and he would need to be present. Mrs. Rector said there has been no contact from Mr. Adams until this morning when he sent a letter to the office stating that the accumulation of cars only happened twice since he has lived there and both times have been within the last six months. She added a copy of the letter is included in this report. She said the Zoning Inspector went back to the property today and reported the front yard has been cleaned up but there are still a few cars in the back yard by the garage. Mrs. Rector said she went by the property on Saturday and there were six cars in the back and the Inspector said there were six cars in the back and they are not sitting in the driveway they are in back by the garage. She added this property is zoned "A" Agriculture.

Mr. Adams asked why his property is zoned Agriculture.

Amanda Mosiman said you can have residential areas in that zoning.

Mrs. Rector said people normally rezone their property to a residential zoning in order to have smaller lots or to eliminate uses like horses or animals.

Mr. Adams said he has obviously removed all of the cars. He said they had an over fluctuation of cars; they have a storage lot in Evansville and they have a company they dealt with and one of the employees had cancer and she was the one who handled things and so they ended up with a large amount of cars and he had no place to park them. He said that happened twice but he has removed everything and anything that is left there now is what he owns. He said he does tinker on his friends cars too.

Guy Gentry asked if the “recovery vehicle” (tow truck) is kept at his house.

Mr. Adams said he keeps the two recovery vehicles in his barn for security purposes as well as protection from the weather. He apologized for the cars being there and said he doesn’t want them there either.

Mike Moesner said essentially the cars are repossessed that he has towed there.

Guy Gentry said he said the six cars there are his or he is working on them; if he gets a call to go get a car where will he take it.

Mr. Adams said he will pick it up and at the most it will sit on his property for a day before he takes it to the lot or to the bank or to another storage facility or auction.

Guy Gentry said if the owners get things straightened out do the owners come to him.

Mr. Adams said if he recovers a car it will go back to the bank or to the auto auction or his storage lot.

Amanda Mosiman said this type of business is not allowed in an Agriculture zoning and so they have a bigger problem than the cars.

Mrs. Rector said the wreckers are also over 1.5 ton vehicles and so he is not in compliance with them either.

Mr. Adams asked what he needs.

Larry Willis asked when he recovers a vehicle why he doesn’t take it to the storage lot in Evansville instead of his residence.

Mr. Adams said he does take them there but it may sit at his house a day because depending on where he is and what time it may go down the next morning.

Mrs. Rector said when she sent him the letter the closest zoning she could come up with was automobile sales and repair which is a “C-3” zoning.

Mr. Adams said he doesn’t have any customer contact or public interaction.

Discussion ensued that they were trying to find an appropriate zoning and this specific use is not listed in the ordinance.

Mr. Adams said his biggest truck is a 450 and it doesn’t have a dual axle.

Mrs. Rector said they can't treat him any differently than the previous person on the agenda with the semi at his house. She said a commercial vehicle is a commercial vehicle and he has two of them.

Amanda Mosiman said so they are looking at a rezoning or a cease and desist.

Attorney Doll said the least burdensome zoning would be the "C-3" and there will probably be neighbors who won't be happy.

Discussion ensued over the acreage of the property and the proximity of the neighbors.

Mrs. Rector said in the past people have rezoned a small portion of their property with a Use and Development Commitment in order to come into compliance. She said she knows that is spot zoning but...basically they are looking at him driving home two wreckers and keeping them there and no more cars brought in and out and the office being ran out of his house.

Larry Willis asked if he has any employees.

Mr. Adams said he doesn't.

Further discussion ensued over the use and required zoning.

Mike Moesner said if he has a lot in Evansville isn't that really where his business is and he lives in the Agriculture does he really need anything because you can have a truck in an Agriculture zoning.

Mrs. Rector said this is different than a farm truck because farming is exempt. At this point several members began speaking at once.

Mr. Adams said he wants to keep his trucks at his house because he doesn't want to waste gas to drive to the lot to pick them up each time he needs to use it. He said he doesn't see any difference between that and the person who works for Waynes Supply that has a big truck in his driveway.

Attorney Doll said if the property is not zoned commercial you can't have anything over 1.5 ton vehicles. He said this really needs to be in a proper zoning and he thinks at the least it should be a "C-3" Highway Commercial with a Special Use.

Mrs. Rector asked just for him to have his trucks and office there.

Mr. Adams said he just wants to be able to drive his trucks home.

Further discussion ensued over the zoning and where the trucks are parked.

Mr. Adams said the letter said he could remedy the situation by removing the cars and he did.

Mrs. Rector said she didn't know he had the wreckers there until tonight.

Discussion ensued over the complaint and that the most appropriate zoning would be a "C-3".

Mrs. Rector said the person who filed the complaint may be present this evening. She said she wants to state Mr. Adams can file for a rezoning for a portion of his property to cover the building and part of his

driveway for the business and also have a Use and Development Commitment which would let this be the only thing he could do there, period. She said that would also make his “tinkering” on his friends cars legal too because that is repair to automobiles.

Attorney Doll said this still could be subject to challenge by spot zoning but is less likely in something as generic as the Agriculture zoning as opposed to someone putting a business in the middle of an “R-1” zoning. He said he thinks they want to hear the remonstrations and see exactly what the extent of the issue is and then perhaps what the Board could do is give the landowner a reasonable amount of time to file a rezoning if he wants and then those who don’t like that can remonstrate and the Board can decide.

Ascertaining there were no remonstrators present the President called for a motion.

Mike Moesner said it sounds like the simplest thing for him to do is to file for a rezoning on the driveway and garage to “C-3” which would allow him to park his trucks there and tinker on vehicles.

Mr. Adams said the only other option is he can’t park his trucks there. He said he finds it odd that other people can drive their Vectren trucks or Waynes Supply trucks home and they live in town and he lives in the country. He asked about the rezoning.

Mrs. Rector said he could come into the office and they can explain it to him. It was discussed who would need to send notice of the meeting and the rezoning procedure.

Mr. Adams said he can understand why people didn’t like the cars there and he didn’t like it either and understands they had a complaint they have to address. He said he wants to make it right for everybody.

Mike Moesner made a motion for Mr. Adams to seek a rezoning of the driveway and barn to come into compliance.

Mrs. Rector asked if he wants to give a time frame for the application to be filed.

Mike Moesner added to the motion that the application must be filed in order to be heard at the next meeting.

Mr. Adams asked if the application is online to which Mrs. Rector said it is but he needs to come into the office so staff can help him.

The motion was seconded by Larry Willis and unanimously carried.

Formal Complaint ~ Kathy Effinger ~ 5533 Martin Road ~ Determination on violation of alleged boarding house in an “R-1D” Single Family Dwelling zoning district.

Mark Effinger was present.

The President called for a staff report.

Mrs. Rector said a complaint was filed June 5, 2012 signed by five neighboring residents saying the property is being used as a boarding house. She said the complaint states *The property is being used as a boarding house per one of the renters who also stated the owner does not live there however, four*

unrelated men do...The neighbors would like the property returned to single family residence inhabited by the owner and not rental property. New strangers appeared today (6-5-12) and sounds of interior remodeling are present. Mrs. Rector said a letter was sent to Ms. Effinger on June 11th informing her of the complaint and that if in fact she was running a boarding house she is in violation of the Comprehensive Zoning Ordinance and that this was to be placed on the agenda this evening and she must be present. She said Ms. Effinger telephoned the office Monday, July 2, 2012, telling staff she did live there and had children and friends there. She added she said she couldn't make the meeting and Sheila told her she should at least send an email to respond to the letter. She said Ms. Effinger did respond via email and a copy is in your packets. She said the email states now that she is renting out a room which would fall under the boarding/lodging house definition: *a dwelling or part thereof where lodging and/or meals are provided for compensation* which requires an "R-3" Resort zoning. She said the Zoning Inspector went to the property on Friday, July 6th and reports *I made a site visit to this address. I saw no signs of this house being used as a boarding house. There was one car in the driveway. The house and yard were nice.* She said as they can see by the email that she has rented out rooms previously.

Mark Effinger said Kathy has lived there continuously for ten years but they do own a house together in Florida and they have spent some time there this year. He said it is possible the neighbors didn't see them at the house for some period of time but they have maintained their residence there.

Guy Gentry asked if they are renting out any portion of the house.

Mr. Effinger said there is one room currently rented out to a gentleman whose family is moving down from Indianapolis and he will be out by the end of July.

Guy Gentry said that is a problem because you can't rent out a portion of a single family residence.

Mrs. Rector asked if they have it rented out after this gentleman leaves to which Mr. Effinger indicated they didn't.

Guy Gentry asked if they now realize they can't.

Mr. Effinger said they realize now they can't or she realizes she can't; he doesn't own the house. He said he doesn't know if he is renting or not but he lives there also.

Attorney Doll said his suggestion would be to give them until August to come into compliance with the understanding that there will be no further violations.

The President called for remonstrators.

Terry Willis said he lives across the lake from this house and part of what Mark said it true; a lot of the people have moved out since they filed the complaint. He said the vehicles from Arizona and Illinois are gone and he thinks the one from Florida is also gone. He said last year during the fall the people from California left. He said he doesn't know who does or doesn't live in Florida but they are renovating some apartment houses in Evansville and it is his understanding they were living there so they didn't have to drive back and forth while they were renting out the place in Newburgh. He said all they want is for it to be a single family residence and not rented out. He said he filed the complaint and the day he filed it someone was showing the property to four people and he assumed they were going to be moving in. He said they just don't want strangers in the neighborhood.

Guy Gentry said while they are in Florida they can rent out the whole house to one family, which may have four or five people in it but not to four or five separate individuals. He said while they are living there they can't rent out a portion of it because that makes it a boarding house.

Mrs. Rector said they do have a definition of what a family is. She said it doesn't just mean mom, dad and kids.

Attorney Doll said it is any number of individuals occupying a dwelling and maintaining a common household and single housekeeping unit and using common cooking facilities not herein defined as a boarding house, lodging house or hotel, constitutes a family. He said if they are renting out room by room they wouldn't constitute a single housekeeping unit and so it would not be a family.

Patricia Wohadlo said she is also a neighbor and her main concern is with all the gentlemen living there they don't know if they are sex offenders or parolees; they have no idea who they are because they are all from out of state.

Jeff Valiant said so now they are down to one extra man in the house; correct.

Mr. Effinger said one person is renting a bedroom and he will be gone at the end of July.

Amanda Mosiman asked what was the deal about the construction.

Mr. Effinger said there never was any construction; there was a house across Martin Road that just added on and there was a lot of noise coming from that.

The President called for comments from the Board.

Jeff Valiant said by the end of the month he will be in compliance.

Attorney Doll said the thing is to insure they don't have other problems and end up with more complaints in August or September. He said he thinks they need to fix this problem one time. He said if it takes to the end of the month to fix it then that is fine but the understanding needs to be that a dwelling unit – which is what this is – is meant to be for a single family. He said they can rent the whole house to a family but only one family can live there; they can't rent room by room because that is a boarding house and it needs to be rezoned. He said his recommendation is they give this to the end of the month to come into compliance and if it is not in compliance then or thereafter they go to court.

Mrs. Rector asked how will they know.

Attorney Doll said they go to the house and re-inspect.

Mike Moesner asked how the Inspector did it last time.

Mrs. Rector said he drove past the house. She said there isn't anything they can do unless they let them in the house.

Attorney Doll said they can get a subpoena.

Guy Gentry said they can send the Assessor down there; they don't need a subpoena; they can go in to see if there are additional things to assess for.

Terry Willis said if the Inspector had been there an earlier time there would have been multiple cars from out of state. He said they are all gone and so it sounds like they are doing just what Mr. Effinger said they are doing.

Mrs. Rector asked if he sees the automobile of the man living there.

Mr. Willis said there is a car there now with Florida plates.

Mr. Effinger said the gentleman has a car but he works long hours but he still maintains his residence in Indianapolis and so he is only at their house from Monday night around 8:00 pm through Thursday night and so unless Mr. Willis, who lives across the lake, was driving up their driveway at 8:00 pm at night, he would never see the car.

Mrs. Rector said she doesn't know how they could prove if someone else was living at the house.

Attorney Doll said he suspects the neighbors will be watching and will notice the cars and file another complaint.

Mrs. Rector said he said to do an inspection and she wouldn't know what to look for and there is no way she can inspect the house unless they let her inside.

Mr. Effinger said Terry Willis suggested he send an email letting them know the gentleman has moved out.

Discussion ensued over when the gentleman would move out.

Brad Overton made a motion that by August 1st this be determined to not be a boarding house but only a single family residence.

Attorney Doll said the neighbors need to understand that if they see the vehicle traffic they think constitutes a violation occurring they can file another complaint.

Brad Overton added that if that occurs they can proceed with court hearings.

Discussion ensued that Mr. Effinger could inform Mrs. Effinger of this discussion to which it was discovered that they are divorced.

Attorney Doll said under the penalty section of the Warrick County Zoning Ordinance it says that a violation of any article shall be guilty of a misdemeanor and upon conviction shall be fined not less than \$10 or no more than \$300 for each day of violation. He said the court has been giving the \$300 penalties and so that can amount to a large sum. He said he hopes he will impress upon his ex-wife that it is not their desire to hurt people but it is their job to enforce the statutes and if they receive complaints they have to do it.

Guy Gentry said there is a motion on the floor that needs a second but before he calls for one he would like to ask if that motion could include that being Mrs. Effinger is not here and Mr. Effinger is not an owner of this home that a letter be sent to Mrs. Effinger stating this needs to cease and desist not later than August 1, 2012.

Brad Overton amended his motion and Jeff Valiant seconded it. The motion carried unanimously.

Mrs. Rector asked if they want a letter back from her.

Attorney Doll said the letter should add that Mr. Effinger has promised that some communication back verifying that they are now in compliance.

ATTORNEY BUSINESS

Attorney Doll said they have two zoning violations set for hearing in August; Jarvis is August 22 and Rainey is August 17th.

EXECUTIVE DIRECTOR BUSINESS:

Mrs. Rector asked if they have any objections for her to submit the transfers for the copier and scanner.

It was the consensus of the Board for her to submit the transfers.

Mrs. Rector introduced the Board to Molly MacGregor as the new employee. She said another employee will begin in August and then all of the positions will be filled.

*

Brad Overton said a few months ago they added that the person filing the complaint would have to be present at the Board hearings. He said one of the complaints no one showed up and if they are going to require that....

Mrs. Rector said they tell people when they file the complaint they have to come to the meeting and they are sent the agendas. She said she thought they discussed that if they didn't show up at the meeting they would just drop the complaint.

Amanda Mosiman asked if they can just forget complaints like that.

Attorney Doll said he didn't think they could; once the Board has knowledge...

Brad Overton said if they had just looked and seen the complainant was not here before the man ever opened his mouth they could have just said they are going to delay this to next month; is that how they should handle this from now on.

Attorney Doll said they need to have a procedure rule to deal with this if they want to make that the rule but they can't make their mind up about that in the middle of a meeting and deal with it one way one time and another way the next.

Mrs. Rector said the complaint form says if they are not here it could mean it could be grounds for administrative dismissal.

Attorney Dolls said “could”.

Mrs. Rector said the complaint form says *by filing this complaint I agree to cooperate and assist Warrick County in all investigations and in any pursuit and enforcement actions taken upon this complaint including but not limited to attending and testifying at all public meetings or court hearings resulting from the filing of this complaint. I understand that failure to assist or cooperate may be grounds for the administrative dismissal of this complaint. Dates and times of public hearings and court hearings will be supplied by staff.*

Amanda Mosiman said she doesn’t agree with that. She said they made their formal complaint; if they send the inspector out and they know it isn’t in compliance, whether they are here or not they have proof they are not in compliance.

Guy Gentry said it says “may” so in that case they wouldn’t. He said but if it looks like they have cleaned it up and they are not here....

Attorney Doll said it could be considered; the lack of attendance by the complaining party could be evidence they could consider in their evaluation of the seriousness of the violation and whether they think action should be taken or not. He said he also believes that once they are confronted with an existing violation he isn’t sure they have the ability to off handedly dismiss it because someone doesn’t show up for the hearing.

Brad Overton said instead of dismissing it could it be they just delay it to the next month.

Attorney Doll said if they are going to back up this agenda because someone doesn’t show up after they came in and filed a complaint they could have an agenda with twenty complaints on it.

Larry Willis said they could have spite filings.

Attorney Doll said they have had spite filings and that is why this language was suggested. He said he thinks they have done about all they can do unless they make this policy change – you don’t appear it is dismissed. He said that is a very risky policy change and everybody may have a different opinion on how they are willing to vote upon that. He said it seems to him it either has to be “may be dismissed” or “could be dismissed” as opposed to “will be dismissed” but one way or another it has to be in the policy.

Mrs. Rector said she thinks it is bad in looking at the two complaints tonight; you could have said one is okay because no one showed up and the other was not because they did show up.

Attorney Doll said how would the Town of Elberfeld show up. Mr. Valiant is a Town Board member but he doesn’t know if he is authorized or desires to be the official spokesperson by the Town of Elberfeld to the Board he sits upon because then technically he is disqualified from voting on that.

Brad Overton said he was just wondering about this because he knew they had talked about it.

Attorney Doll said the question is if they want to make appearance mandatory then someone needs to make a motion to amend the form to take out the word “could, should or may” and replace it with “shall”. He said they are going to have a real problem with the audience when there is whole group of people who show up for one complaint and then four or five complaints where no one shows up.

Amanda Mosiman asked where they would draw the line. She said this boarding house complaint had five people who signed and only two showed up.

Attorney Doll said he thinks as long as one shows up that is compliance.

Attorney Doll said his motivation behind the wording was to make sure the complainants showed up at court.

Amanda Mosiman asked if you can subpoena them for court.

Attorney Doll said he can but very often they show up for trial more so than for here.

Brad Overton said he would think about this and asked if this could be placed on the agenda next month.

Mrs. Rector said she would send them all the complaint form for review.

Being no further business the meeting adjourned at 7:50 p.m.

Guy Gentry, President

ATTEST:

Sherri Rector
Executive Director